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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/799,888	03/15/2004	Sergio Cirio	Q79842	8328
23373	7590	05/23/2007		
SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037			EXAMINER TAWFIK, SAMEH	
			ART UNIT	PAPER NUMBER
			3721	
			MAIL DATE	DELIVERY MODE
			05/23/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

SP

<b>Office Action Summary</b>	<b>Application No.</b> 10/799,888	<b>Applicant(s)</b> CIRIO, SERGIO	
	<b>Examiner</b> Sameh H. Tawfik	<b>Art Unit</b> 3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 April 2007.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5,7,9,10,17 and 18 is/are pending in the application.  
4a) Of the above claim(s) 18 is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-5,7,9,10 and 17 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

Newly submitted claim 18 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: claim 18 is sub-combination of claim 1; as claim 18 refers to “means for imparting rotation to said caps.”

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 18 withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 7, 9, and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Brechel et al. (U.S. Patent No. 6,199,350).

Brechel discloses a capping head device for application of cap to container, comprising: a casing having an end mouth designed to fit on the container so as to define a closed chamber (Figs. 4 and 5; via evacuation unit 35 fit on container 1 to define a closed chamber); a capping head disposed within said chamber (Figs. 4 and 5; via capping head 35, 42, and 43 defined in housing 37, which defines a chamber), said capping head directly contacting the caps (2) so as to apply the cap to the container (1), and means for connecting said closed chamber with a source

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of vacuum for the purpose of communicating said vacuum (via vacuum valve 47 and vacuum line 48) to the space inside the container before the end of application of the cap on the container (Fig. 5 and column 4, lines 41-44), said connecting means being configured to control fluid communication between the closed chamber and the source of vacuum in direct dependence on the relative axial position of the casing with respect to the capping head (via valve 47, controls the fluid communication to the closed chamber with respect to the cap 2); wherein said casing is mounted on said capping head so as to be movable therewith towards and away from the container (Figs. 4 and 5 and column 6, lines 4-7), and that said closed chamber is defined by said casing when the casing engages the container as a result of the lowering movement of the capping head onto the container (Fig. 5).

Regarding claim 7: a capping machine comprises one or more capping head devices (Fig. 1; via few capping head devices 35 on the capping machine).

Regarding claim 9: further comprising a seal ring provided on said end mouth of said casing to provide a seal between the casing and the container (Figs. 4 and 5; via sealing ring 39).

Regarding claim 17: the casing is being moveable relative to the container from a first position displaced from the container to a second position at which a bottom end portion of the casing contacts the container, see for example (Figs. 4-6); an exterior of the container below the casing is outside the chamber (Figs. 4-6).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-5, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brechel et al. (U.S. Patent No. 6,199,350).

Regarding claim 2: Brechel discloses that wherein said casing is mounted on the structure of the capping head (via casing 37 mounted in the structure of the capping head 35) with mechanical means and has its end mouth made in an end wall that is elastically compliant within the casing, see for example (Figs. 3-6).

Brechel does not disclose a rolling bearing used in mounting the casing to the structure of the capping head. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made not to worry of the use of rolling bearing, as a matter of engineering design choice, since it has been held that omission of an element and its function in a combination where the remaining elements perform the same functions as before involves only routine skill in the art. In re Karlson, 136 USPQ 184.

And/or the examiner takes an official notice that such use of rolling bearing is old, well known, and available in the art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Brechel's machine by the use of rolling bearing as an engineering design choice, in order to smoothing the movements of the casing.

Regarding claim 3: Brechel discloses that wherein said connection means comprise valve means (via valve 49) set between the structure of the casing and the structure of the capping head (Figs. 4 and 5).

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Regarding claim 4: Brechel discloses that wherein said valve means (49) comprise a valve body rigidly connected to the casing and mounted with the possibility of axial sliding with respect to a valve element, see for example (Figs. 4-6).

Regarding claim 5: Brechel discloses that wherein said valve element (49) has two opposite operating positions, in one of which it connects a chamber communicating with the space inside the casing to an opening for connection with the source of vacuum and in the other of which it connects the aforesaid chamber to an opening for connection to a discharge (Figs. 4-6 it is inherent that the valve operate in two opposite positions).

Regarding claims 10: Brechel does not disclose that the capping head includes means for imparting rotation to said caps. However, the examiner takes an official notice that such use of rotating cap head is old, well known, and available in the art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Brechel's machine by the use of rotating the cap head as an engineering design choice, in order to secure the caps to the containers.

#### ***Response to Arguments***

Applicant's arguments filed 04/24/2007 have been fully considered but they are not persuasive.

It seems like applicant is pointing out to the novelty of the invention in pages 6 and 7, which such exact explanation of the novelty is not disclosed in the claims. It seems like applicant is arguing of something not claimed. Note that the claimed "means for connecting" as disclosed in claim 1, is not in title of the 112 6<sup>th</sup>., as claim 3 intend to describe such means.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sameh H. Tawfik whose telephone number is 571-272-4470. The examiner can normally be reached on Tuesday - Friday from 9:00 AM to 7:30 PM.

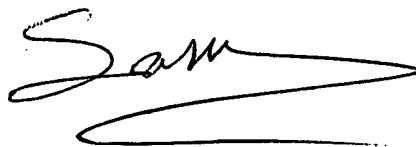
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Sameh H. Tawfik  
Primary Examiner  
Art Unit 3721

ST.

A handwritten signature in black ink, appearing to read 'Sameh', with a long horizontal flourish extending to the right.